

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2004-16-T - ORDER NO. 2004-226

JUNE 24, 2004

IN RE:	Application of Thomas W. Bivens d/b/a	)	ORDER GRANTING
	Bivens Moving Services, 1808 Biltmore	)	CLASS E CERTIFICATE
	Drive, Charleston, SC 29412 for a Class E	)	
	(HHG) Certificate of Public Convenience and	)	
	Necessity.	)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of Thomas W. Bivens d/b/a Bivens Moving Services (“Bivens” or the “Applicant”), 1808 Biltmore Drive, Charleston, SC 29412. This Application was received by the Commission as a request for a Class E Certificate of Public Convenience and Necessity to transport household goods as follows:

Household Goods, As Defined in R. 103-210(1):

Between points and places in Charleston, Berkley and Dorchester Counties, South Carolina.

The Commission’s Executive Director instructed the Applicant to publish a Notice of Filing in a newspaper of general circulation in the service area desired. The Notice of Filing was published and instructed the public as to how to file pleadings to participate in the proceedings on the Application. Petitions to Intervene were received from Kohler Moving and Storage, Inc. (“Kohler”), Dale J. Cook Moving and Storage, Inc., and Azalea Moving and Storage, Inc.

**APPLICABLE LAW**

1. S.C. Code Ann. § 58-23-20 (Supp. 2003) provides, in part:

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.

2. S.C. Code Ann. § 58-23-40 (1976) provides:

No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway in this State without first having obtained from the Commission, under the provisions of Article 3 of this chapter, a certificate and paid the license fee required by Article 5.

3. S.C. Code Ann. § 58-23-590(A) (Supp. 2003) provides:

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.

4. S.C. Code Ann. § 58-23-590(C) (Supp. 2003) provides:

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the Commission that:

- (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulations; and
- (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must

meet the requirements of public convenience and necessity. The determination that the proposed service is required by the public convenience and necessity must be made by the commission on a case by case basis.

5. Following enactment of S.C. Code Ann. § 58-23-590, the Commission proposed amendments and changes to the Commission's regulations governing Motor Carriers. The amended regulations became effective in June 1998.

6. 26 S.C. Regs. 103-102(1) (Supp. 2003) defines "Certificate of PC&N" as

the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

7. 26 S.C. Regs. 103-102(14) (Supp. 2003) defines "Common Carrier by Motor Vehicle" as "any person<sup>1</sup> which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976."

8. A "Class E Motor Carrier" is defined in 26 S.C. Regs. 103-114 (Supp. 2003) as "a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a

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<sup>1</sup> 26 S.C. Code Regs. 103-102(15) defines "person" as "any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof."

packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission.”

9. 26 S.C. Code Regs. 103-133 (Supp. 2003) is entitled “Proof Required to Justify Approving an Application” and provides in subsection (1) as follows:

(1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to be appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses.<sup>2</sup> If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant’s safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.D.P.S safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina, and agree to operate in compliance with these statutes and regulations.

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<sup>2</sup> By Commission Order No. 1999-654, dated September 15, 1999, (Docket No. 1999-376-T), the Commission approved a waiver of the shipper witness requirement for those applicants seeking authority in three counties or less. In approving the waiver for these applicants seeking such a limited scope of authority, the Commission considered the difficulty faced by “small carrier” applicants in providing appropriate shipper witnesses. By Order No. 2000-024, dated January 5, 2000, (Docket No. 1999-376-T), the Commission clarified its decision from Order No. 1999-654, to specifically state that the waiver of the shipper witness requirement applied only to those applicants requesting authority to transport household goods between points and places in three, or less, contiguous counties.

- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.
- c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

10. 26 S.C. Code Regs. 103-134 (Supp. 2003) is entitled "When Hearing May Be Held" and provides in relevant part that "[w]hen an application for a Certificate of PC&N is submitted and there is no opposition, the Commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether public convenience and necessity are already being served."

#### **EVIDENCE OF RECORD**

A hearing was held on April 8, 2004, at 10:30 AM in the offices of the Commission. The Honorable Mignon Clyburn, Chair, presided. Joseph Alton Bivens, Esquire appeared representing the Applicant. None of the Intervenors appeared at the hearing. The Commission Staff was represented by Jocelyn Boyd, Staff Counsel.

At the start of the hearing, the Applicant presented, and entered into the record, a letter from Intervenor Kohler in which Kohler withdrew its opposition to the Application

of the Applicant. No representatives of the other two Intervenors were present at the hearing.

Testifying on behalf of the Applicant was the Applicant himself, Mr. Thomas Bivens. Mr. Bivens testified that he has almost 30 years experience in the moving industry. Mr. Bivens has worked for Bivens Transportation, Nielsen Moving and Storage, and Lawrence Transportation Services. While working for these businesses, Mr. Bivens worked in a variety of positions, including as a customer service representative. With his extensive experience, Mr. Bivens stated that he is very familiar with the federal and state statutes and regulations regulating the moving industry. Mr. Bivens stated that based on his experience that he plans to focus his company's business on small, local residential moves in the Charleston area. He stated that most companies do not do small moves and do not work on the weekends and this was his target market. Mr. Bivens stated that based on this business plan that his operations should not affect the large moving companies currently licensed in the Charleston area.

In further support of his Application, Mr. Bivens introduced into evidence certain documents evidencing the great increase in population and housing in the three county area over the past several years, and in particular the large number of moves within the three county area. Mr. Bivens stated that he plans to join the South Carolina Tariff Bureau and to set his rates and charges accordingly. Mr. Bivens also testified to his plans to lease moving trucks and to hire 4 to 5 employees. He further showed photographs of moving equipment, including blankets, hand trucks, and dollies, which he already possesses.

S.C. Code Ann. 58-23-590(C)(Supp. 2003) states that the Commission shall issue a common carrier certificate of public convenience and necessity if the applicant proves to the Commission that: (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of the chapter and the Commission's regulations and (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity. We would note that we have waived the "shipper witness" rule to show public convenience and necessity, required under 26 S.C. Code Regs. 103-133 (Supp. 2003), for applicants seeking authority in three contiguous counties. In the present case, the Applicant has in fact limited his request to the three contiguous counties of Charleston, Berkley, and Dorchester.

We find that the Applicant established that he is fit, willing and able to provide the services for which he seeks a license from this Commission. We further find that the Applicant established that public convenience and necessity warrant the issuance of a permit in the Tri-County area surrounding Charleston, South Carolina.

#### **FINDINGS OF FACT**

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact:

1. The Applicant, Bivens, desires to provide moving services of household goods within and between points and places in Charleston, Berkley, and Dorchester Counties, South.
2. The Applicant, Bivens, is fit, willing, and able to provide and properly perform the services which it seeks to provide. "Fitness" has been demonstrated by (1)

evidence of extensive experience by Mr. Bivens in the moving industry and (2) that Bivens will operate in compliance with all statutes and regulations pertaining to for-hire motor carrier operations. Further, the record contains (1) a certification that Bivens is familiar with the regulations and statutes governing for-hire motor carrier services and (2) that there are no outstanding judgments pending against Bivens. “Able” was demonstrated by the evidence of record which reveals that Mr. Bivens has thirty years experience in the moving business and is familiar with the operation of such businesses as well as the state and federal statutes and regulations regulating this. The evidence indicates that Mr. Bivens possesses the financial wherewithal necessary to establish and conduct the local for-hire motor carrier operations in South Carolina for which he seeks authority. Further, the record shows that Bivens can obtain the requisite minimum insurance as required by this Commission. “Willingness” was demonstrated by the filing of the Application and the testimony of Mr. Bivens indicating the Applicant’s desire to undertake this business venture in South Carolina.

3. The services proposed by Bivens are required by the public convenience and necessity. We find that the testimony and evidence presented on behalf of the Applicant clearly established that the public convenience and necessity warrant the issuance of the permit requested by the Applicant in the Charleston, Berkley, and Dorchester County area of South Carolina. We find the evidence of public convenience and necessity provided by the Applicant to be credible.

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that Bivens has demonstrated that it meets the requirements of fit, willing, and able as set forth in 26 S.C. Code Reg. 103-133 (Supp.2003).

2. The Commission concludes that Bivens has sufficiently demonstrated through its presentation that the public convenience and necessity in the area in which Arrow proposes to serve requires the services proposed by the Application.

3. Based on the conclusions above, that Bivens has demonstrated that it meets the requirements of fit, willing, and able and that it has demonstrated that the public convenience and necessity require the services it proposes, the Commission concludes that a Class E Certificate of Public Convenience and Necessity should be granted and that Bivens should be authorized to provide moving services within the following operating scope:

Household Goods, As Defined in R. 103-210(1):  
Between points and places in Charleston, Berkley, and  
Dorchester Counties, South Carolina.

This grant of authority is contingent upon compliance with all Commission regulations as outlined below.

#### **IT IS THEREFORE ORDERED:**

1. That the Application Thomas W. Bivens d/b/a Bivens Moving Services for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved

for authority to transport household goods between points and places in Charleston, Berkley, and Dorchester.

2. Bivens shall file the proper license fees and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-241 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended, and R.38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 23A (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, a Certificate shall be issued to Thomas W. Bivens d/b/a Bivens Moving Services authorizing the motor carrier services granted herein.

4. Failure of the Applicant either (1) to complete the certification process by complying with the Commission requirements of causing to be filed with the Commission proof of appropriate insurance, and an acceptable safety rating within sixty (60) days of the date of this Order or (2) to request and obtain from the Commission additional time to comply with the requirements of the Commission as stated above, shall result in the authorization approved in the Order being revoked.

5. Prior to compliance with the above-referenced requirements and receipt of a Certificate, the motor carrier services authorized herein shall not be provided.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/  
Mignon L. Clyburn, Chairman

ATTEST:

/s/  
Bruce F. Duke, Executive Director  
(SEAL)